83-660

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1983

WILLIAM KEASLER,
Petitioner,

v.

FRANK GRANAT, JR.,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

SAX & MacIVER
By: *CLYDE H. MacIVER
LAWRENCE B. RANSOM
*Counsel of Record for Petitioner

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QUESTIONS PRESENTED

1. Whether the City of Seattle, which has limited the number of moorage sites available for floating homes in Seattle as part of a comprehensive program of shoreline preservation and management, may constitutionally prohibit an eviction of a floating home when (a) the stated reason for the eviction is to permit the moorage owner to move his own floating home to the vacated site in order to rent that floating home for profit, (b) the moorage owner already makes a substantial profit from operation of the moorage, and (c) the eviction will destroy all but the scrap value of the floating home.

2. Whether the interpretation placed by the Washington Supreme Court on the due process clause of the Washington Constitution (Art. I, § 16) in its decision in

Granat v. Keasler, 99 Wn.2d 564, 664 P.2d 830 (1983), violates the due process clauses of the fifth and fourteenth amendments of the Constitution of the United States by destroying petitioner's floating home without due process.

PARTIES

All of the parties in the Supreme Court of the State of Washington are listed in the caption.

Since the proceeding draws into question the constitutionality of an ordinance of the City of Seattle, namely, Seattle, Wash. Ordinance 109280, as amended by Seattle, Wash. Ordinance 109630, and neither the City of Seattle nor any agency, officer or employee of the City of Seattle is a party, it is noted that 28 U.S.C. § 2403(b) may be applicable.

TABLE OF CONTENTS

TABLES OF AUTHORITY

Constitutions

Page

Statutes

Rules and Regulations

NO. _____

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WILLIAM KEASLER,
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FRANK GRANAT, JR.,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF WASHINGTON

The petitioner William Keasler respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Washington in this case.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Washington in this case, under the name of Granat v. Keasler, is reported at 99 Wn.2d 564, 663 P.2d 830 (App. A, infra, A-1-A-18).

The Supreme Court of the State of Washington issued a mandate on July 22, 1981, stating that an Order Denying Motion for Reconsideration was filed on July 21, 1983, thus terminating review. (App. B, infra, A-19-A-20.) The Supreme Court of the State of Washington had reviewed the Order for Partial Summary Judgment, Findings of Fact and Conclusions of Law, and the Judgment of the trial court (the Superior Court for King County, Wshington). (App. C, infra, A-21-A-30.)

JURISDICTION

The judgment of the Supreme Court of the State of Washington (App. A, infra, A-1-A-18) was entered on May 19, 1983. A timely Motion for Reconsideration was denied on July 21, 1982. (App. B, infra, A-19-A-20.) The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS AND ORDINANCES INVOLVED

The fifth amendment to the Constitution of the United States provides in pertinent part as follows:

> [No person shall] be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The fourteenth amendment to the Constitution of the United States provides in pertinent part as follows:

> [N]or shall any state deprive any person of life, liberty, or property, without due process of law. . . .

Art. 1, § 16 of the Constitution of the State of Washington provides in pertinent part as follows:

> No private property shall be taken or damaged for public or private use without just compensation having been first made. . . .

The ordinances involved are Seattle, Wash. Ordinance 109280 (Aug. 27, 1980) (App. D, infra, A-31-A-57), as amended by

Seattle, Wash. Ordinance 109630 (Jan. 26, 1981) (App. E, infra, A-58-A-65).

STATEMENT OF THE CASE

The City of Seattle encompasses a substantial amount of shoreland, both along the tidal waters of Puget Sound and along the fresh water lakes of Lake Union and Lake Washington. For many years, the fresh waters of Seattle - principally Lake Union - have been the locus of a residential community of "floating homes." The floating homes of Seattle are substantial structures built on non-motorized, non-navigable floats. In Seattle, Wash. Ordinance 109280, as amended, a "floating home" is defined as:

> [A] building constructed on a float used in whole or in part for human habitation as a single-family dwelling, which is moored, anchored or otherwise secured in waters within the City limits.

App. D, infra, A-33-A-34.

There are slightly more than 400 floating homes in Seattle. The ownership of a floating home requires a substantial investment. Yet the historical development of the floating home community has led to a peculiar and complicating phenomenon: in most cases there is no unity of ownership between a floating home and the submerged land over which it floats. The majority of floating home owners, despite their substantial investment, must nonetheless be tenants of moorage space.

In the 1960's and early 1970's, Congress, and the Washington and Seattle legislatures, enacted programs to regulate, manage, and protect the shorelines and waters of Seattle. This comprehensive shoreline management program effectively limited the number of floating home moorage sites. Every available floating home moorage is occupied, and there is little

prospect that new floating home moorages will be developed in Seattle.

The Seattle City Council recognized the negative effects of its effort to manage and protect the shorelands and waters of Seattle. Because the shoreline management program eliminated additional moorage sites, the removal of a floating home from its moorage destroys the substantial value of a floating home, reducing it to scrap value. In addition, the elimination of additional floating home moorage sites placed tremendous power in the hands of the owners of the moorage properties. As an essential element of its shoreline management program, the Seattle City Council therefore enacted Seattle, Wash. Ordinance 109280, as amended. (App. D and E, infra, A-31-A-65.)

Ordinance 109280, inter alia, limits the reasons for eviction of a floating home from a moorage facility. Permitted reasons

for eviction include traditional "for cause" reasons (non-payment of rent, creation of a nuisance, or failure to comply with reasonable terms and conditions of tenancy), and several other "no-fault" reasons, related to the moorage owner's plans for use of the moorage site, independent of any conduct of the floating home owner.

In this case, petitioner William Keasler is the owner of one of the ten floating homes moored at a moorage facility owned and operated by the respondent, Frank Granat, Jr. Respondent sought to evict petitioner's floating home for a purely commercial reason. Respondent intended to move a rental floating home, owned by him but then moored elsewhere, to the site occupied by petitioner's floating home. Respondent believed he could command a higher rent for his floating home at the site occupied by petitioner.

When this case began in the fall of 1980, respondent received substantial income from the operation of this moorage facility. Three of the ten floating homes at the facility were owned by the respondent, and were rented to various tenants. The other seven floating homes were owned by floating home owners, including petitioner. Those floating home owners paid respondent a moorage fee of $195 or more each month.

Seattle, Wash. Ordinance 109280, as amended by Ordinance 109630 (App. D and E, infra, A-31-A-65), prohibits the commercially motivated, "no-fault" eviction sought by respondent. The central question in this case is whether that restriction is constitutional.

The federal question in this case was raised almost at the outset, and is a critical component of the basic issue of the constitutionality of the ordinance.

Respondent sued in unlawful detainer, petitioner defended by asserting that Ordinance 109280, as amended, barred the eviction. Petitioner challenged the constitutionality of the eviction provisions as violative of the equal protection and due process clauses of both the Washington and United States Constitutions. It has been petitioner's position at every stage of this case that the eviction provisions of the ordinance are constitutional under both the United States and Washington State Constitutions, and that a determination that the ordinance was unconstitutional would effect an unconstitutional taking of petitioner's property -- his floating home -- without due process. The issue was succinctly stated in petitioner's Motion for Reconsideration, as follows:

> While the [trial] court concluded that the Ordinance unconstitutionally deprives [respondent] Granat of his

> property without just compensation, the court overlooked the fact that an eviction totally and irrevocably deprives appellant [petitioner] Keasler of his property without just compensation.

While the Washington Supreme Court decided that the eviction provisions of the Ordinance were unconstitutional under both the United States and the Washington Constitution, the state constitutional question is not independent of the federal issue. A state cannot interpret its own Constitution in a manner which violates the Constitution of the United States. Petitioner submits that the interpretation given to the due process clause of the Washington Constitution by the Washington Supreme Court in this case imposes a taking of petitioner's property in violation of the fifth and fourteenth amendments of the Constitution of the United States.

REASONS FOR GRANTING WRIT

The action of the Washington Supreme Court in this case presents two related issues requiring the attention and direction of this Court. The first issue concerns the attempt by the Washington Supreme Court to apply the principles of the United States Constitution to the Seattle floating homes program. The second issue concerns the constitutionally violative effect of that Court's interpretation of the Washington Constitution. If these matters are left unreviewed by this Court, the effect will be the unprincipled destruction of substantial private property, the uncontrolled alteration of a valuable municipal resource, and the legal disability of a city to protect and regulate that resource.

The Washington Supreme Court faced the question of the authority of a local

government, the City of Seattle, to regulate and protect its beautiful and valuable shorelands. In its regulation, the City attempted to recognize and balance the substantial property interests of floating home owners such as the petitioner, moorage owners such as the respondent, and the significant public interest, both in protection and management of shorelands and waterways, and in preservation of Seattle's unique and historic floating homes community.

The City also recognized that government limitation of the number of moorage sites, without regulation of eviction from those sites, presents the real potential for a "taking" of floating homes; the preamble to Ordinance 109280 notes that, without available moorage after eviction, the value of a floating home will be reduced to its scrap value. (App. D, infra, A-31-A-32.) As part of its scheme,

the City therefore enacted Ordinance 109280 to avoid that danger by regulating evictions.

The Washington Supreme Court attempted to apply a constitutional "taking" analysis when, in Granat v. Keasler, the eviction regulations were challenged by a moorage owner. That Court reached the conclusion that Ordinance 109280 violated, inter alia, the fifth amendment of the United States Constitution (App. A, infra, A-16-A-17). The Court's method of reaching this result under the Constitution is, however, so improper and so unclear that the City of Seattle, or any government body, will be unable to find any constitutional guidance in the decision.

In its opinion, the Washington Supreme Court cited most of the applicable principles of "taking" analysis. The Court pointed out that "the courts will not weigh the wisdom of the particular legislation

enacted." (App. A, infra, A-11.) The Court recognized the need for "balancing" of public and private interests. (App. A, infra, A-12.) Most significantly, the Court recognized that one of the most important "taking" rules is "whether the owner is thereby prevented from making a profitable use of the property." (App. A, infra, A-13.) Remarkably, after citing all of the well-established rules applicable under the fifth and fourteenth amendments of the United States Constitution, the Court concluded that none of the rules were applicable. The Court concluded, without benefit of any rules or guiding principles, that respondent was suffering, at the hands of Ordinance 109280, as amended, a "deprivation of property without just compensation." (App. A, infra, A-15.)

This absence of guiding principles provides no direction for the City of Seattle, or for any government body,

considering the limits of its regulatory authority. As subsequent decisions build upon this incorrect base, municipalities may move farther away from the legitimate areas of their authority. This nascent situation can only be set straight by having this Court consider this case in light of proper and consistent constitutional principles.

The related basis for review concerns the ability of the Washington Supreme Court, under the circumstances of this case, to interpret the Washington Constitution in a manner that will itself effect a taking of property. In Granat v. Keasler, the Washington Supreme Court interpreted the due process clause of the Washington Constitution in a manner which invalidates the eviction provisions of the ordinance, thus removing petitioner's protection against uncontrolled removal from limited moorage space.

Without the protection of the ordinance, petitioner will suffer (and in fact, as of the filing of this petition, already has suffered) an almost total loss of the value of his floating home. The cause of this loss is not the petitioner's actions. In fact, it may be fair to say that the cause is not the respondent moorage owner's action either. The reason why petitioner suffers a reduction of the value of his floating home to scrap value is that shoreline management legislation has deprived him of any place else to move the floating home if it is evicted from a moorage site.

This is directly the result of the decision of the Washington Supreme Court. The Washington Supreme Court has engaged in an alarming misapplication of due process "taking" principles. It has stricken as unconstitutional a legislative enactment which allows the respondent to make ample

remunerative use of his property. The invalidation of that legislation causes a total loss of remunerative or any other value for the owner of a floating home, such as petitioner.

The Washington Supreme Court has thus "protected" respondent at the considerable expense of petitioner. Petitioner suffers a total loss of his floating home so that respondent is not denied the opportunity to make some more money from a moorage business which already produces a steady and ample income. Thus the Washington Supreme Court's interpretation of the Washington Constitution itself effects a taking of petitioner's property without due process, in violation of the fifth and fourteenth amendments of the Constitution of the United States. As with the method and principles of the taking analysis, this too is a question requiring review by this Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

SAX & MacIVER
By: *CLYDE H. MacIVER
LAWRENCE B. RANSOM
*Council of Record for Petitioner

APPENDIX A

GRANAT v. KEASLER
99 Wn.2d 564

[No. 48917-3. En Banc. May 19, 1983.]

FRANK GRANAT, JR., Respondent, v.
WILLIAM KEASLER, Appellant.

[1] Statutes - Validity - Ordinance - Police Power - Test. A party challenging the validity of a municipal ordinance overcomes the presumption of validity by showing that the ordinance is an unreasonable exercise of the police power.

[2] Zoning - Property - Restriction on Use - Validity. A legislative enactment limiting the use of property is an unreasonable exercise of the police power if the interest of the public in such regulation does not justify the restriction on the landowner's ability to use his property in his own interest. A measure which restricts the landowner's activities on the property differently from the

general public may constitute a taking of property without just compensation.

[3] Landlord and Tenant - Unlawful Detainer - Counterclaims - In General. A counterclaim may not be asserted in an unlawful detainer action.

Utter, J., concurs by separate opinion.

Nature of Action: The owner of a floating home moorage brought an unlawful detainer action to require a tenant to remove his floating home from the moorage. The tenant had disregarded an eviction notice on the basis of a city ordinance restricting the eviction of tenants from floating home moorages.

Superior Court: The Superior Court for King County, No. 81-2-07201-1, Stephen M. Reilly, J., entered a partial summary judgment in favor of the landlord on July 24, 1981, and Robert E. Dixon, J., entered a judgment on August 20, 1981, restoring the moorage to the landlord.

Supreme Court: Holding that the city ordinance was an unconstitutional exercise of the police power and that counterclaims were properly dismissed, the court affirms the judgments.

Perkins, Coie, Stone, Olsen & Williams, by Lawrence B. Ransom, for appellant.

Olwell, Boyle & Hattrup, by Clinton H. Hattrup and Rodney T. Harmon, for respondent.

DORE, J.--This appeal raises the issue of the constitutionality of Seattle ordinance 109280 § 3, regulating the eviction of floating home tenants from their moorages. The City of Seattle initially enacted a houseboat ordinance, 107012, in December 1977, prohibiting the eviction of houseboats under certain circumstances and providing for nonbinding arbitration of moorage rents. Section 2(6) of the original ordinance explicitly provided there could be no eviction unless

> The floating home owner is directed by the moorage owner to remove his or her home from its moorage site by a written notice given at least six months prior to the demanded date of removal where the purpose of such demand for removal is to permit the moorage owner to personally occupy such moorage site with a floating home to be used as such owner's residence, provided that such demand for removal is not contrary to any existing lease agreement between the moorage owner and such floating home owner and that such moorage owner locates for the displaced floating home owner another lawful moorage site with The City of Seattle.

(Italics ours.)

A unanimous court in Kennedy v. Seattle, 94 Wn.2d 376, 617 P.2d 713 (1980) held section 2 of Seattle ordinance 107012 unconstitutional, stating at pages 386-87:

> Sections 2(5) and (6) deprive the moorage owner of any personal use of the moorage and in effect give a houseboat owner a perpetual right to use the moorage. We hold section 2 of Seattle ordinance No. 107012 to be unconstitutional.

Prior to the announcement of the Kennedy decision, the Seattle City Council passed ordinance 109280 amending and

superseding the first ordinance. The City Council then amended the eviction provisions once more by ordinance 109630.

Section 3(6) of ordinance 109280 provides:

> The floating home owner is directed by the moorage owner to remove his or her home from its moorage site by a written notice given at least four months prior to the demanded date of removal where the purpose of such demand for removal is to permit the moorage owner to convert the moorage site to a personal or other non-commercial use or to personally occupy such moorage site with a floating home to be used as such owner's residence, provided that such demand for removal is not contrary to any existing lease agreement between the moorage owner and such floating home owner and that such moorage owner locates another lawful moorage site within the City for the displaced floating home owner.

Section 14 of ordinance 109280 contains a severability clause.

I

Respondent Granat is the owner of submerged property at 2201 Fairview Avenue East on Lake Union in Seattle. Appellants

Keasler and Douglas own houseboats moored on Granat's moorage facility, renting the space at the rate of $195 per month. Granat also operates a houseboat moorage facility at 2321 Fairview Avenue East, also on Lake Union.

When Granat demanded an increase in rent in September 1980, tenants Keasler and Douglas filed petitions seeking review by the Seattle hearing examiner of the reasonableness of the demanded moorage fee increase, pursuant to sections 5 through 9 of ordinance 109380. On October 4 and 15, 1980, Keasler and Douglas received letters from Granat demanding the removal of their houseboats from his moorage by February 1, 1981. Granat wanted to switch the houseboats at the 2201 moorage owned by the tenants with two houseboats owned by Granat which were moored at the 2321 moorage.

The tenants wrote Granat that they did not intend to move and did not recognize

the validity of the notice given to them. Granat then commenced an unlawful detainer action against them. A motion and cross motion for summary judgment were heard by Judge Reilly on July 22, 1981. The tenants raised ordinance 109280 as a defense to the action, citing the sections of the ordinance which limit the reasons for which a moorage owner may lawfully demand and bring about the removal of a floating home from a moorage site. Granat countered that the ordinance, as applied to the specific facts of the case, imposed an unconstitutional taking of his property without compensation. Granat argued that the eviction provisions of the ordinance were designed to protect against the danger of eviction of a houseboat with no place to go, emphasizing that in the present case he was offering tenants alternative moorage sites. Judge Reilly held section 3 of ordinance 109280, which contained language identical

to that contained in section 2 of the ordinance under attack in Kennedy, was unconstitutional as a taking of private property without compensation, and granted partial summary judgment for Granat.

In an oral opinion, Judge Reilly gave the basis for his partial summary judgment as follows: (1) the City could not constitutionally require Granat to relocate Douglas and Keasler; (2) section 3 of the ordinance prevented a landlord from removing a tenant's houseboats to make room for his own houseboats, and (3) section 3 of the ordinance was unconstitutional because it prevented Granat from using the site to rent out his houseboats, while nothing prevented tenants from renting out their houseboats. There were two factual issues which then remained: whether the eviction was timely mailed, and whether Granat had commenced the action vindictively against

Keasler for exercising his rights, a violation of section 4 of the ordinance.

At trial before Judge Dixon on July 30, 1981, Keasler struck his retaliation defense, and testimony was taken concerning the service of the eviction notices. Judgments adverse to the defendants were entered on August 20, 1981. The judgments authorized the issuance of a writ of restitution, but were not conditioned upon Granat's providing alternative moorage sites. The appeal was transferred from the Court of Appeals to this court under RAP 4.2(a)(2) and (4). On March 17, 1982, Granat and Douglas negotiated a settlement and Douglas' appeal was dismissed. The case Granat v. Keasler continues here.

II

We first address the issue of whether section 3 of Seattle ordinance 109280, as amended by ordinance 109630, imposes an

unconstitutional taking of private property without just compensation.

[1.2] Any ordinance passed is presumed constitutional and the party challenging the classification has the heavy burden of overcoming the presumption of its constitutionality. Yakima Cy. Deputy Sheriff's Ass'n v. Board of Comm'rs, 92 Wn.2d 831, 835, 601 P.2d 936 (1979). An exercise of the police power, as is present here, is subject to judicial review and must pass the test of reasonableness. Petstel, Inc. v. County of King, 77 Wn.2d 144, 459 P.2d 937 (1969). In Petstel, we held that to meet the judicial test of reasonableness, a regulation under the police power (1) must be reasonably necessary in the interest of the public health, safety, morals and the general welfare, (2) must be substantially related to the evil sought to be cured, and (3) the classes of businesses, products or persons regulated,

or the various classes within the legislation must be reasonably related to the legitimate object of the legislation.

The Petstel court then went on to note at page 155:

> These . . . tests represent the limits of judicial review of legislative enactments under the police power. The courts will not examine the motives of the legislative body; they will not require factual justification for the legislation if it can reasonably be presumed; and the courts will not weigh the wisdom of the particular legislation enacted.

In Kennedy v. Seattle, supra, this court examined the provisions of ordinance 107012, the predecessor to the ordinance now at issue. There the court found the eviction requirement of the ordinance unconstitutionally prohibitory and confiscatory. The Kennedy court was presented with the issue of whether the ordinance was a valid exercise of the police power or a taking or damaging of private property for public use in violation of Const. art. 1, §

16 and the fifth amendment to the United States Constitution. This court there followed the test established in Maple Leaf Investors, Inc. v. Department of Ecology, 88 Wn.2d 726, 731, 565 P.2d 1162 (1977):

> The question essentially is one of social policy which requires the balancing of the public interest in regulating the use of private property against the interests of private landowners not to be encumbered by restrictions on the use of their property.

See also Peterson v. Department of Ecology, 92 Wn.2d 306, 596 P.2d 285 (1979). The Kennedy court found the limitations on the use by the moorage owner to be so restrictive as to amount to a taking of unconstitutional dimensions, stating that to require a landlord to locate a nonexistent moorage for a houseboat owner before the residence of the landlord can be moved to the property is not reasonable. Kennedy, at 386.

More recently, this court faced the issue of the constitutionality of section 5 of ordinance 109280, as amended by ordinance 109986, in Jeffery v. McCullough, 97 Wn.2d 893, 652 P.2d 9 (1982). Addressing the rent control provisions of the ordinance, we held that moorage owners had not been denied property without just compensation.

In Department of Natural Resources v. Thurston Cy., 92 Wn.2d 656, 601 P.2d 494 (1979), this court upheld a regulation which protected the habitat of bald eagles, stating that a determination of whether a particular regulation imposed an unconstitutional taking of private property for public use involved a consideration of "the type of encumbrance imposed" and "whether the owner is thereby prevented from making a profitable use of the property". In Carlson v. Bellevue, 73 Wn.2d 41, 435 P.2d 957 (1968), cited by the court in the above

case, this court adopted the following rule related to "taking" analysis:

> [T]o sustain an attack upon the validity of a zoning ordinance, an aggrieved property owner must show that if the ordinance is enforced the consequent restrictions on his property preclude its use for any purpose to which it is reasonably adapted. He is required to show that there is no possibility for profitable use under the restrictions of the ordinance, or alternatively that the greater part of the value of the property is destroyed by it, although there may be some slight use remaining. Adaptability, it has been declared, envisages economic as well as functional use, and assumes not the most profitable use, but that some permitted use can be profitable.

Carlson, at 51 (quoting 8 E. McQuillin, Municipal Corporations § 25.45, at 117 (3d ed. rev. 1965).

Granat argues that Carlson, Peterson, Department of Natural Resources, Petstel, and Maple Leaf are all distinguishable because the challenged land use regulations in those cases prohibited everyone from using the land in the manner sought by the

landowner. Here, Granat argues, the landlord is prohibited from the intended use of the property, but not the tenant. We agree.

We hold that section 3 of ordinance 109280 is a deprivation of property without just compensation and violates the fifth amendment of the United States Constitution and article 1, section 16 of the Washington State Constitution.[1]

III

We next address the issue of whether counterclaims may be asserted as an affirmative defense in an unlawful detainer action. In its order of partial summary judgment, the trial court struck the tenants' counterclaims, dismissing them without prejudice.

---

[1]In light of our declaration regarding the unconstitutionality of section 3 of ordinance 109280, that section obviously cannot be used as an affirmative defense in an unlawful detainer action.

[3] It has long been settled that counterclaims may not be asserted in an unlawful detainer action. Young v. Riley, 59 Wn.2d 50, 365 P.2d 769 (1961); Woodward v. Blanchett, 36 Wn.2d 27, 216 P.2d 228 (1950). In so holding, the courts have acknowledged the Legislature's intent to create a summary procedure and limit the use to the landlord's right of possession. In an unlawful detainer action, the court sits as a special statutory tribunal to summarily decide the issues authorized by statute and not as a court of general jurisdiction with the power to hear and determine other issues. Young, at 52.

IV

We hold section 3 of Seattle ordinance 109280 unconstitutional as it deprives moorage landlords of property without just compensation, thus violating the fifth amendment to the United States Constitution

and article 1, section 16 of the Washington State Constitution.

We affirm Judge Reilly's order under date of July 24, 1981, and Judge Dixon's judgment under date of August 20, 1981, as such order and judgment pertain to Keasler.

The case is remanded to the Superior Court for issuance of a writ of restitution directed to Keasler, restoring the possession of the property at 2201 Fairview Avenue East, Seattle, Washington to the plaintiff.

The plaintiff is awarded his statutory costs.

WILLIAMS, C.J., and ROSELLINI, STAFFORD, BRACHTENBACH, DOLLIVER, DIMMICK, and PEARSON, J.J., concur.

UTTER, J. (concurring)--I concur in the result reached by the majority. I seriously question, however, whether the facts of this case amount to a "taking" or "damaging" as prohibited by Const. art. 1,

§ 16. I would prefer to follow the approach of the New York court in Fred F. French Investing Co. v. New York, 39 N.Y. 2d 587, 350 N.E.2d 381, 385 N.Y.S.2d 5 (1976). There the court held that regulations which require the owner of private property to keep it as parks, without buildings and open for public use, did not amount to a taking because they did not enrich the City in its "enterprise capacity". Liability was found, however, on the ground that the regulations unreasonably deprived the owner of property rights in the land, thereby depriving him of private property without due process. For an excellent discussion of the problems involved in our current approach to unconstitutional takings of private property without just compensation see Stoebuck, Police Power, Takings, and Due Process, 37 Wash. & Lee L. Rev. 1057 (1980).

APPENDIX B

IN THE

SUPREME COURT OF THE STATE OF WASHINGTON

FRANK GRANAT, JR., Respondent, v. WILLIAM KEASLER, Appellant.	MANDATE No. 48917-3 King County No. 81-2-07201-1 C/A# 10765-8-I

The State of Washington to: The Superior Court of the State of Washington

in and for King County

This is to certify that the opinion of the Supreme Court of the State of Washington filed on May 19, 1983, became the decision terminating review of this court in the above entitled case on July 21, 1983. This cause is mandated to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule of Appellate Procedure 14.3, costs are taxed as follows:

$144.10 in favor of respondent and against appellant. Order Denying Motion for Reconsideration filed herein July 21, 1983. Copy attached.

cc:
Sax & MacIver
Mr. Lawrence B. Ransom
Olwell, Boyle & Hattrup
Mr. Rodney T. Harmon
Report of Decisions
Clerk, Div. I

lb
attch.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 22nd day of July, A.D. 1983

/s/
REGINALD N. SHRIVER,
Clerk of the Supreme Court, State of Washington

APPENDIX C

IN THE

SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

FRANK GRANAT, JR., Plaintiff,	)	NO. 81-2-07201-1
v.	)	ORDER FOR PARTIAL
MICHAEL DOUGLAS, Defendant.	)	SUMMARY JUDGMENT
	)	

FRANK GRANAT, JR., Plaintiff,	)	NO. 81-2-07276-3
v.	)	
WILLIAM KEASLER, Defendant.	)	
	)	

All parties having moved for Summary Judgment in the above consolidated Unlawful Detainer Actions, Rodney T. Harmon having appeared and argued on behalf of the Plaintiff, Bruce Corker having appeared and argued on behalf of the Defendants, the Court having considered the authorities cited by the parties, and the Court having considered the documents identified in Attachment A appended hereto, and the Court

being fully satisfied in the premises, now therefore:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Section 3 of Seattle City Ordinance 109280, as amended by Ordinance 109630, is void and without effect as applied to the facts of these consolidated cases because it is an unconstitutional taking of private property without just compensation and therefore may not be asserted by the Defendants as an affirmative defense.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants may not assert RCW 19.86, the Consumer Protection Act, as an affirmative defense.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants' counterclaims are dismissed without prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there is no substantial controversy concerning the material facts.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants' Motion for Summary Judgment is denied and the Plaintiff's Motion for Summary Judgment is granted only to the extent outlined above.

DONE IN OPEN COURT this 24th day of July, 1981.

/s/
Stephen M. Reilly, Judge of the Superior Court of the State of Washington for King County

Presented by:

/s/
Rodney T. Harmon
of Attorneys for Plaintiff

IN THE

SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

FRANK GRANAT, JR., Plaintiff,	)	NO. 81-2-07276-3
v.	)	FINDINGS OF FACT
WILLIAM KEASLER, Defendant.	)	AND CONCLUSIONS OF LAW

This unlawful detainer action having been consolidated for trial with Cause No. 81-2-07201-1; trial having been held before the Court on July 30, 1981; Plaintiff having been represented by Clinton H. Hattrup and Rodney T. Harmon; the Defendant having been represented by Lawrence B. Ransom; witnesses having testified, exhibits having been introduced, argument having been made and considered; and the court being fully satisfied in the premises, now therefore, the Court hereby makes the following:

FINDINGS OF FACT

I

The Plaintiff, Frank Granat, Jr., is the owner of the submerged real property at 2201 Fairview Avenue East, Seattle, Washington, legally described in paragraph I of Plaintiff's Complaint.

II

The Defendant, William Keasler, owns a houseboat in which he resides and which he moors on the Plaintiff's above-described premises at moorage site #2.

III

Until his tenancy was terminated, William Keasler was a month-to-month tenant on the Plaintiff's above-described premises.

IV

On April 8, 1981 a Notice to Terminate Tenancy as of April 30, 1981 was posted on the front door of William Keasler's houseboat at moorage site #2,

2201 Fairview Avenue East, Seattle, Washington, and a copy of said notice was deposited in the United States mail in King County on that same date addressed to William Keasler at the above address.

V

Said notice was posted and mailed by Gregory Turner, who is a person over the age of 18, not interested in nor a party to this action, is a citizen of the United States and a resident of the State of Washington, and was so on April 8, 1981.

VI

The Defendant did not vacate the premises on or after April 30, 1981 and remains in possession at the time of Judgment.

VII

The fair market rental value of the premises occupied by the Defendant is $195.00 per month.

From the foregoing Findings of Fact, the Court makes and enters the following:

CONCLUSIONS OF LAW

I

The Defendant, William Keasler, is in unlawful detainer of the Plaintiff's premises at 2201 Fairview Avenue East, Seattle, Washington, legally described in paragraph I of Plaintiff's Complaint, and has been in unlawful detainer since May 1, 1981.

II

A Writ of Restitution should issue restoring the Plaintiff, Frank Granat, Jr., to possession of the premises unlawfully detained by the Defendant, William Keasler.

III

Judgment should be awarded to the Plaintiff in the amount of $715.65 for damages in addition to statutory costs as herein taxed.

DONE IN OPEN COURT this 20th day of August, 1981.

/s/
Robert H. Dixon
Judge of the Superior Court

Presented by:

/s/
Rodney T. Harmon
Of Attorneys for Plaintiff

IN THE

SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

FRANK GRANAT, JR., Plaintiff,	)	NO. 81-2-07276-3
v.	)	JUDGMENT
WILLIAM KEASLER, Defendant.	)	

The Court having entered Findings of Fact and Conclusions of Law, and the Court having found for the Plaintiff, now therefore:

IT IS HEREBY ORDERED that a Writ of Restitution shall issue directing the Sheriff of King County to restore the Plaintiff, Frank Granat, Jr., to the possession of the premises unlawfully detained by the Defendant, William Keasler, and further directing the Sheriff to remove the Defendant and his possessions, including his houseboat (KCA #146), from said premises, to-wit:

Moorage site #2, 2201 Fairview Avenue East, Seattle, Washington and legally described as:

Lot 1 in Block 55 of Lake Union Shorelands, City of Seattle, State of Washington.

IT IS FURTHER ORDERED THAT Judgment is awarded to the Plaintiff in the amount of $715.65 for damages.

IT IS FURTHER ORDERED that costs are awarded to the Plaintiff in the amount of $120.68.

DONE IN OPEN COURT this 20th day of August, 1981.

/s/
Robert E. Dixon
Judge of the Superior Court

Presented by:

/s/
Rodney T. Harmon
Of Attorneys for Plaintiff

APPENDIX D

ORDINANCE 109280

AN ORDINANCE relating to floating homes, regulating the eviction of floating homes from their moorages, establishing a procedure for review and regulation of moorage fee increases, and repealing Ordinance 107012.

WHEREAS, federal, state and local legislation concerning shorelands has had the effect of limiting the number of available floating home moorage sites and has resulted in a situation in which every available floating home moorage within the City is occupied, and there is little prospect that new floating home moorages will be developed; and

WHEREAS, the ownership of a floating home requires a substantial investment, and a floating home is not readily mobile; and the required removal of a floating home from its moorage when no other

moorage is readily available will destroy the value of such property except for its value as scrap; and

WHEREAS, floating homes are a unique part of the environment and life of The City of Seattle, and some regulation of moorage relationships is needed to preserve floating homes and to maintain the public peace and safety in the floating home community; and

WHEREAS, the voluntary process established by Ordinance 107012 has not been effective in preventing the imposition of unreasonable moorage fee increases, nor has it been effective in removing the threat that moorage owners may, through one large, or several lesser moorage fee increases, force a floating home owner out of the moorage, and controls upon such increases are needed to prevent unfair and coercive

increases while assuring moorage owners a reasonable return; Now, Therefore,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Statement of Purpose. The purpose of this ordinance shall be to prevent the eviction of floating homes from floating home moorages through arbitrary actions or unreasonable rent increases.

Section 2. The following terms used in this ordinance shall have the meanings set forth below:

CONSUMER PRICE INDEX -- The Consumer Price Index for all Urban consumers (CPI-U) for the Seattle-Everett area, as compiled by the United States Department of Labor, Bureau of Labor Statistics.

FLOATING HOME -- A building constructed on a float used by whole or in part for human habitation as a single-family dwelling, which is moored, anchored

or otherwise secured in waters within the City limits.

FLOATING HOME MOORAGE, OR MOORAGE -- A waterfront facility for the moorage of one or more floating homes, and the land and water premises on which such facility is located.

HEARING EXAMINER -- The Office of Hearing Examiner as established by Ordinance No. 102228.

MOORAGE FEE -- The periodic payment for the use of a floating home moorage site.

MOORAGE SITE - A part of a floating home moorage, located over water, and designed to accommodate one floating home.

Section 3. It is unlawful for a floating home moorage owner or operator to give notice to a floating home owner to remove his or her floating home from its moorage site, or to attempt to evict or

complete the eviction of a floating home from its moorage site even though notice to remove such floating home from its moorage site was given to the owner of such floating home prior to the effective date of this ordinance, except for the following reasons:

(1) The floating home owner fails to pay the moorage fee which he is legally obligated to pay.

(2) The floating home owner refuses or otherwise fails to comply with reasonable written terms or conditions of tenancy, other than the obligation to surrender possession of the floating home moorage site, after service of a written notice to comply or vacate as provided in RCW 59.12.030(4). Moorage owners may require written acknowledgment by floating home owners of such terms and conditions. Such acknowledgment shall not constitute approval of or agreement by the floating

home owner with such terms and conditions, nor shall it constitute an acknowledgment by the floating home owner that such terms or conditions are reasonable or the same as those required of similarly situated floating homes. Except for moorage fees, similarly situated floating homes within a floating home moorage shall be subject to the same moorage terms and conditions. Floating home owners shall be given thirty days written notice in advance of any new term or condition or of any change in an existing term or condition. No floating home owner shall be evicted for failure to comply with a term or condition not uniformly applied, unless the floating home owner has specifically agreed to the term or condition in writing.

(3) The floating home owner repeatedly violates the same term or condition of tenancy and has received three or more notices to comply or vacate, as

provided in Section 3 (2) of this ordinance, for the same violation in a twelve month period.

(4) The floating home owner, after receiving written notice of objection from the floating home moorage owner or operator, fails to abate a nuisance on such person's floating home, or causes substantial damage to the floating home moorage property, or substantially interferes with the comfort, safety or enjoyment of other floating home owners at the floating home moorage.

(5) The floating home moorage owner or operator elects to change the use of the entire moorage property to a commercial use other than a floating home moorage and gives at least six months advance notice to the owners of floating homes moored at such floating home moorage to vacate their moorage sites, and prior to eviction, manifests such determination to change the

use of the property to a use different than that of a floating home moorage by obtaining all permits which are necessary to change the use to which the property is devoted, including but not limited to shoreline substantial development permits and building permits, and by taking one or more of the following actions:

(a) Entering into one or more contracts or leases with new tenants or users for the new use of the property.

(b) Obtaining financing from a lending institution or from other sources for the purpose of paying all or a portion of the cost of converting the property for the new use.

(c) Obtaining architect's drawings or other substantial plans for converting the property to the new use.

(d) Taking other actions reasonably related to the conversion of the moorage site property to a new use.

(6) The floating home owner is directed by the moorage owner to remove his or her home from its moorage site by a written notice given at least four months prior to the demanded date of removal where the purpose of such demand for removal is to permit the moorage owner to convert the moorage site to a personal or other non-commercial use or to personally occupy such moorage site with a floating home to be used as such owner's residence, provided that such demand for removal is not contrary to any existing lease agreement between the moorage owner and such floating home owner and that such moorage owner locates another lawful moorage site within the City for the displaced floating home owner.

Section 4. The owner or operator of a floating home moorage shall not take or threaten to take reprisals or retaliatory action against a floating home owner

because of any good faith exercise of such floating home owner's legal rights in relation to his or her floating home.

"Reprisal or retaliatory action" within the meaning of this section shall mean and include but not be limited to any of the following actions by the floating home moorage owner or operator when such actions are initiated primarily because of the floating home owner's good faith acts:

(1) demanding removal of the floating home from its moorage site;

(2) increasing the moorage fee required of the floating home owner;

(3) reducing services to the floating home owner;

(4) increasing the obligations of the floating home owner;

(5) otherwise interfering with the quiet enjoyment of the floating home.

This section may be enforced pursuant to Section 15 of this Ordinance, by asserting such reprisal or retaliatory action as an affirmative defense in any action by a floating home moorage owner or operator against a floating home owner, or by an action for damages or injunctive relief by a floating home owner against a floating home moorage owner or operator.

Section 5. (1) If at least one-half of the floating home owners in a floating home moorage who are subject to a moorage fee increase in the same percentage amount (plus or minus one percentage point) believe that the demanded fee increase is unreasonable, they may collectively file a petition for fact-finding with the Hearing Examiner. The petition shall list separately the name of each floating home owner appealing and shall be filed within fifteen days of receipt by such floating home owner or owners of written notification of the

moorage fee increase. The person or persons filing a petition for fact-finding shall pay a filing fee of Twenty-five Dollars ($25.00) per petitioner, with a maximum fee of Seventy-five Dollars ($75.00) to the City Treasurer, which shall be refunded if no hearing is required. The Hearing Examiner may consolidate the petitions of floating home owners contesting moorage fee increases at the same moorage.

(2) Moorage owners or operators shall be permitted to increase the moorage fee demanded of a floating home owner without fact-finding in an amount not exceeding: 1) the floating home owner's proportional share of increased property taxes, utility fees, state land lease fees, city street use or other permit fees incurred by the moorage owner which benefit the floating

home owners and result in increased operating expenses; or 2) the CPI factor, whichever is greater. Moorage fee increases attributable to the cost increases listed above may not be assessed until actually incurred. Before assessing any fee increase, moorage owners shall provide floating home owners at least thirty (30) days notice of the increase which shall explain the specific reasons for the increase and the apportionment formula used.

(3) The CPI factor for a floating home moorage shall be determined by multiplying the percentage increase in the CPI since the last moorage fee increase by the current moorage fee, and by multiplying the product thereof by a fraction, the numerator of which shall be the number of square feet of land at the subject moorage owned by the moorage owner and the denominator of which shall be the total number of square

feet of land in the moorage (privately owned land plus leased land). Floating home owners may petition for a fact-finding whenever a proposed moorage fee increase exceeds the moorage owner's actual increase in operating expenses as listed above or the CPI factor described above, whichever is greater.

Section 6. The Hearing Examiner shall conduct a public hearing for the purpose of making a factual determination as to whether a demanded moorage fee increase is reasonable in amount; that is, whether such moorage fee increase is necessary to assure a fair and reasonable return to the moorage owner. In making the determination, the Hearing Examiner, in addition to any other factors deemed relevant, shall consider the following factors:

(1) increases or decreases since the last moorage fee increase in the expenses

of operation and maintenance of the floating home moorage since the last fee increase provided that such expenses are for services, repairs, property maintenance, or any other expenses which are reasonable and necessary for the continued operation of a floating home moorage;

(2) the reasonable costs of capital improvements since the last moorage fee increase to the floating home moorage property which benefit the floating home owners occupying moorage sites at the floating home moorage;

(3) increases or decreases since the last moorage fee increase in necessary or desirable services furnished by the floating home moorage owner or operator where such increased or decreased services affect the person or persons initiating the fact-finding proceedings;

(4) substantial deterioration since the last moorage fee increase in the

facilities provided for the occupants of moorage sites at such floating home moorage due to failure of the moorage owner or operator to perform ordinary repairs, replacement and maintenance of the floating home moorage property and improvements;

(5) comparability with moorage fees charged for other floating home moorage sites in the City;

(6) increases or decreases in the Consumer Price Index;

(7) a reasonable return on leased land.

Section 7. The Hearing Examiner shall give all concerned parties at least fifteen days notice of the date, time and place of the public hearing and shall adopt and publish such rules and procedures governing the conduct of the hearings as shall be deemed necessary. In connection with such hearing the Hearing Examiner may require any party to the proceedings to provide any

information needed to determine whether the demanded moorage fee increase is reasonable. Either party's failure to provide information requested by the Hearing Examiner may, at the Hearing Examiner's discretion, result in a finding or findings against the party refusing to provide the information as regards facts that could be proved or disproved by the requested information. No contested moorage fee increase shall take effect until approved by the Hearing Examiner's written decision; provided that the moorage owner or operator may recover retroactively to the date of the notice of the increase, such increases as are found reasonable by the Hearing Examiner. It shall be unlawful for a moorage owner or operator to demand, change, or collect any moorage fee in excess of the amount found reasonable by the Hearing Examiner for a period of one

year from the date of the Hearing Examiner's decision, unless the moorage owner can show that extraordinary damage to the moorage occurring after the decision has necessitated cost increases which make it impossible to realize a reasonable return without a fee increase. Any fee increase necessitated by extraordinary damage shall be subject to Hearing Examiner review whenever such review is requested by at least one-half of the floating home owners affected, any other provision in this ordinance to the contrary notwithstanding.

Section 8. Within sixty days of the passage of this ordinance the mayor shall appoint, with the confirmation of the Council, a Disputes Resolution Board (the Board) which shall comprise seven (7) members; three floating home moorage owners, three floating home owners and one person who shall chair the Board who is neither a floating home or moorage owner.

Each person shall serve for a term of three years provided that the initial appointments shall be arranged so that one home owner and one moorage owner shall serve for one year, one home owner and one moorage owner shall serve for two years and the other three persons shall serve an initial term of three years. No two of the floating home owners may be moored at the same floating home moorage. No two moorage owners shall have a financial interest in the same floating home moorage. The members of the Board shall serve without pay. Immediately upon receiving the petition for fact-finding pursuant to Section 5 of this ordinance the Hearing Examiner shall notify the chair of the Board who shall bring together the involved parties with the Board for the purpose of attempting to resolve the moorage fee dispute voluntarily. A period of three weeks from the date of notification of the

chair of the Board shall be allowed for the Board to achieve a voluntary solution. After the three week period has passed, the proceeding may be terminated by the written request of either the parties or by the written request of the Board chair.

Section 9. No later than seven days after submitting a petition for fact-finding pursuant to Section 5 of this ordinance, each petitioning floating home owner shall, individually or as a group, submit to the moorage owner a written offer stating the amount of increase in the moorage fee that the floating home owner or owners believe to be reasonable. The moorage owner shall, within five days of receiving the offer, accept or reject it in writing or make a counter offer. Within three days of receiving the counter offer the floating home owner shall deliver to the moorage owner, in writing, a final offer, a photographic copy of which shall

be simultaneously delivered to the Hearing Examiner. The envelope containing the photographic copy shall be clearly marked "Final Offer of Floating Home Owner" and shall indicate the name of the person or persons submitting the offer. Any floating home owners or moorage owners who have participated in the three week Board review provided in Section 8 of this ordinance need only submit a "Final Offer" to each other and to the Hearing Examiner. Within three days of receiving the floating home owner's final offer the moorage owner shall deliver to the floating home owner, in writing, a final offer, a photographic copy of which shall be simultaneously delivered to the Hearing Examiner in an envelope clearly marked "Final Offer of Moorage owner" and shall indicate the name of the person or persons submitting the offer. The Hearing Examiner shall not commence the fact-finding hearing until final offers

have been received from all parties. The Hearing Examiner shall not open the envelopes until after the written fact-finding decision has been mailed to the parties. After mailing the decision, the Hearing Examiner shall examine the offers and shall assess reasonable attorney fees: 1) against the moorage owner or operator if the moorage fee increase permitted is equal to or less than the floating home owner's offer, or 2) against the floating home owner(s) if the permitted increase is equal to or greater than the moorage owner's offer. In all other cases each party shall bear his or her own attorney fees. The award of attorney fees shall be made in a separate decision by the Hearing Examiner. Any party who fails to pay assessed attorney fees within 60 days of the Hearing Examiner's decision shall be subject to the enforcement penalties provided in Section 13 of this ordinance.

Section 10. It is unlawful to sell, lease or rent a floating home without advising the prospective purchaser, lessee, or renter of the provisions of this ordinance, and it is unlawful to fail to provide the owner or operator of a floating home moorage with written notice of a proposed change in occupancy of a floating home located at such moorage at least fifteen days in advance of such proposed change in occupancy.

Section 11. Any moorage fee increase appealed pursuant to Ordinance No. 107012 which has not been reviewed by a Fact-Finder in a fact-finding hearing on or before August 18, 1980, shall, at the election of either party, be subject to a binding review by the Hearing Examiner under this ordinance, but only if such increase exceeds the increase permitted by Section 5 of this ordinance. The party seeking review under this ordinance shall

submit a notice of appeal as required by Section 5 of this ordinance and comply with all other appeal procedures. Floating home owners may appeal, pursuant to this ordinance, any moorage fee increase which was found unreasonable by a fact-finder pursuant to Ordinance No. 107012 after June 1, 1979, but which was imposed by the moorage owner despite such finding, but only if such increase exceeds the increase permitted by Section 5 of this ordinance. A petition for Hearing Examiner review in such cases shall be filed according to the terms of Section 5 of this ordinance. Such petitions shall be filed within fifteen days of the imposition of the fee increase or thirty days from the effective date of this ordinance, whichever is later. Should the Hearing Examiner determine that the moorage fee is unreasonable in such cases, the fee shall be reduced to the amount found reasonable by the Hearing Examiner

from the date of the Hearing Examiner's decision.

Section 12. On or before the 31st of December, 1981 the City Council shall review the operation of this ordinance.

Section 13. The City Council hereby declares its intention that the provisions of this ordinance shall be construed and applied as a continuation of the provisions of Ordinance 107012 and the repeal of Ordinance 107012 by this ordinance shall not be construed as affecting such continuous application.

Section 14. The provisions of this ordinance are declared to be separate and severable and the invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance shall not affect the validity of the remainder of this ordinance or the validity of its application to other persons or circumstances.

Section 15. Commission of any of the acts made unlawful by the provisions of Sections 3, 4, 7, 8, 9, 10 or 11 of this ordinance shall constitute a violation subject to the provisions of Chapter 12A.01 and Chapter 12A.02 of the Seattle Criminal Code, and any person convicted thereof may be punished by a civil fine or forfeiture not to exceed Five Hundred Dollars ($500.00). Each week's violation shall constitute a separate offense.

Section 16. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise, it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 11th day of August, 1980, and signed by me in open session in authentication of its passage this 11th day of August, 1980.

/s/Paul Kraabel
President of the City Council

Approved by me this 22nd day of August, 1980

/s/ Charles Royer
Mayor

Filed by me this 22nd day of August, 1980.

/s/ Tim Hill
City Comptroller and City Clerk

(Seal)

Published /s/ Virginia Miller
Deputy Clerk

APPENDIX E

ORDINANCE 109630

AN ORDINANCE relating to floating homes, amending Section 3 of Ordinance Number 109280 to permit moorage owners to use their moorage for their own residences, and requiring moorage owners to compensate displaced floating home owners.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 3 of Ordinance No. 109280 is hereby amended to read as follows:

Section 3. It is unlawful for a floating home moorage owner or operator to give notice to a floating home owner to remove his or her floating home from its moorage site, or to attempt to evict or complete the eviction of a floating home from its moorage site even though notice to remove such floating home from its moorage

site was given to the owner of such floating home prior to the effective date of this ordinance, except for the following reasons:

(1) The floating home owner fails to pay the moorage fee which he is legally obligated to pay.

(2) The floating home owner refuses or otherwise fails to comply with reasonable written terms or conditions of tenancy, other than the obligation to surrender possession of the floating home moorage site, after service of a written notice to comply or vacate as provided in RCW 59.12.030(4). Moorage owners may require written acknowledgment by floating home owners of such terms and conditions. Such acknowledgment shall not constitute approval of or agreement by the floating home owner with such terms and conditions, nor shall it constitute an acknowledgment by the floating home owner that such terms

or conditions are reasonable or the same as those required of similarly situated floating homes. Except for moorage fees, similarly situated floating homes within a floating home moorage shall be subject to the same moorage terms and conditions. Floating home owners shall be given thirty days written notice in advance of any new term or condition or of any change in an existing term or condition. No floating home owner shall be evicted for failure to comply with a term or condition not uniformly applied, unless the floating home owner has specifically agreed to the term or condition in writing.

(3) The floating home owner repeatedly violates the same term or condition of tenancy and has received three or more notices to comply or vacate, as provided in Section 3(2) of this ordinance, for the same violation in a twelve month period.

(4) The floating home owner, after receiving written notice of objection from the floating home moorage owner or operator, fails to abate a nuisance on such person's floating home, or causes substantial damage to the floating home moorage property, or substantially interferes with the comfort, safety or enjoyment of other floating home owners at the floating home moorage.

(5) The floating home moorage owner or operator elects to change the use of the entire moorage property to a commercial use other than a floating home moorage and gives at least six months advance notice to the owners of floating homes moored at such floating home moorage to vacate their moorage sites, and prior to eviction, manifests such determination to change the use of the property to a use different than that of a floating home moorage by obtaining all permits which are necessary to

change the use to which the property is devoted, including but not limited to shoreline substantial development permits and building permits, and by taking one or more of the following actions:

(a) Entering into one or more contracts or leases with new tenants or users for the new use of the property.

(b) Obtaining financing from a lending institution or from other sources for the purpose of paying all or a portion of the cost of converting the property for the new use.

(c) Obtaining architect's drawings or other substantial plans for converting the property to the new use.

(d) Taking other actions reasonably related to the conversion of the moorage site property to a new use.

(6) The floating home owner is directed by the moorage owner to remove his or her home from its moorage site by a

written notice given at least four months prior to the demanded date of removal where the purpose of such demand for removal is to permit the moorage owner to convert the moorage site to a personal or other non-commercial use or to personally occupy such moorage site with a floating home to be used as such owner's residence, provided that such demand for removal is not contrary to any existing lease agreement between the moorage owner and such floating home owner and that such moorage owner locates another lawful moorage site within the City for the displaced floating home owner.

(7) Notwithstanding any other provision of this Section, it shall be lawful for a floating home moorage owner to demand the removal of a floating home from a moorage site by giving the floating home owner at least six months' written notice, when the purpose of such demand is to

permit the moorage owner to use the moorage site for a floating home which will be occupied by the moorage owner as his or her own residence; provided that such floating home moorage owner either:

(a) locates another lawful floating home moorage site within the city for the displaced floating home, or

(b) agrees in writing to compensate the displaced floating home owner for damages caused by the removal of such floating home from the moorage site; said damages not to exceed the fair market value of the floating home with a moorage site prior to eviction.

Section 2. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved

by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 26 day of January, 1981, and signed by me in open session in authentication of its passage this 26 day of January, 1981.

/s/Paul Kraabel
President of the City Council

Approved by me this 26 day of January, 1981

/s/ Charles Royer
Mayor

Filed by me this 26 day of January, 1981

/s/ Tim Hill
City Comptroller and City Clerk

(Seal)

Published /s/ Theresa Dunbar
Deputy Clerk